

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

JESSICA JONES, et al.,

Plaintiffs,

v.

BAIN CAPITAL PRIVATE EQUITY, et al.

Defendants.

Civ. Action No. 2:20-cv-02892

AMERICAN SPIRIT AND CHEER
ESSENTIALS, INC., et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02782

**DECLARATION OF STEVEN J. KAISER IN SUPPORT OF DEFENDANTS'
RESPONSE TO PLAINTIFFS' JOINT MOTION TO MODIFY SCHEDULING ORDERS**

I, Steven J. Kaiser, declare as follows:

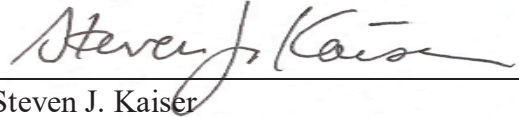
1. I am counsel to Varsity Brands, LLC, BSN Sports, LLC, Varsity Spirit, LLC, Stanbury Uniforms, LLC, Herff Jones, LLC, Bain Capital, LP, Charlesbank Capital Partners, LLC, Varsity Brands Holding Co., Inc., Varsity Spirit Fashions & Supplies, LLC, and Varsity Intropa Tours in the above-captioned matters and have been personally involved in the matters described below.
2. The *Fusion Elite* Plaintiffs contacted Varsity more than three weeks after Varsity served its responses to Plaintiffs' document requests. After the *Fusion Elite* Plaintiffs contacted Varsity, Varsity and Plaintiffs conducted at least 23 separate conference calls spanning approximately 35 hours in an effort to resolve the disputes. The parties eventually reached agreement on June 22, 2021.
3. Despite the February 18, 2022 discovery cutoff, the *Fusion Elite* Plaintiffs repeatedly asked Defendants to agree to extensions to the deadlines in the scheduling order to bring disputed matters to the Court in order to continue discussions. From Varsity's perspective, these discussions were conducted in an inefficient and meandering manner, and after months of back-and-forth, the *Fusion Elite* Plaintiffs ultimately abandoned virtually all of their demands.
4. Varsity produced nearly 77,000 documents to the *Fusion Elite* Plaintiffs by the end of June 2021, a substantial majority of its document productions to date.
5. The *Fusion Elite* Plaintiffs did not reach out to Varsity about depositions until August 2021 and only requested three depositions. Varsity provided a date for the one current employee that Plaintiffs sought, only to have that date rejected. Plaintiffs took their first deposition on November 16 and 17, 2021.

6. I received notice of the *Fusion Elite* Plaintiffs serving a subpoena on PricewaterhouseCoopers LLP on September 29, 2021. I received notice of Plaintiffs serving a subpoena on Rubenstein Public Relations, Inc. and Quinnipiac University on October 27, 2021.
7. The *Fusion Elite* Plaintiffs issued third-party subpoenas to Charlesbank and Bain, for which Charlesbank produced documents on February 2, 2021 and Bain produced documents on March 9, 2021. These documents have also been produced to the *Jones* Plaintiffs.
8. Varsity and the *Jones* Plaintiffs engaged in extensive negotiations, but the *Jones* Plaintiffs negotiations were inefficient and unproductive, making efficient resolution of the remaining disputes impossible.
9. At the *Jones* Plaintiffs' request, the parties twice sought to extend the deadline to bring discovery disputes to the court, first to July 30, 2021 and then again to September 17, 2021. The *Jones* Plaintiffs ultimately filed motions to compel on September 18, 2021, one day after the second extended deadline. As to Charlesbank and Bain, the *Jones* Plaintiffs' letter of July 6 demanded production from the files of nineteen Charlesbank and Bain custodians; two and a half months later, Plaintiffs moved to compel production from seventeen custodians, including all of the Charlesbank custodians listed in their July 6 letter along with an additional custodian identified by the *Jones* Plaintiffs on August 6. Bain and Charlesbank have been equally (and consistently) clear that they would not agree to such massive ESI discovery, particularly in light of the paucity of allegations against them as owners of Varsity from late 2014 to mid-2018 (for Charlesbank) and from

mid-2018 (for Bain). As to Varsity, Varsity and the Plaintiffs reached an agreement regarding these disputes on November 17, 2021, two days before the issue was set for a hearing with Magistrate Judge Pham.

10. The first Notice of Subpoenas of Third-Party gyms that I received from the *Jones* Plaintiffs was not until October 18, 2021. I have continued to receive additional Notices of Subpoenas of Third-Parties, with the most recent Notice arriving only yesterday on December 1, 2021.

11. I declare under penalty of perjury that the foregoing is true and correct. Executed on December 2, 2021.


Steven J. Kaiser